IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 667 of 2004
in
SPECIAL CIVIL APPLICATIONNo 17927 of 2003
with
CIVIL APPLICATION No 1667 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE R.K.ABICHANDANI
and
HON'BLE MR.JUSTICE D.H.WAGHELA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

GUJARAT SECONDARY EDUCATION BOARD
Versus
ALEX JOHN - MINOR THROUGH FATHER AND GUARDIAN

Appearance:
1. LETTERS PATENT APPEAL No. 667 of 2004
MR DIPAK DAVE for MR AD OZA for Appellant
MR BM MANGUKIYA for Respondent No. 1
MS.MANISHA LAVKUMAR, AGP for Respondent Nos. 2&3
MR YM THAKKAR for Respondent No.4

CORAM : HON'BLE MR.JUSTICE R.K.ABICHANDANI
and
HON'BLE MR.JUSTICE D.H.WAGHELA

Date of decision: 12/03/2004

ORAL JUDGEMENT

(Per : HON'BLE MR.JUSTICE R.K.ABICHANDANI)

#. Admit. Mr. B.M. Mangukiya waives service on behalf of the respondent no.1. At our request, the learned AGP waives service on behalf of the respondent nos. 2 and 3. Mr. Y.M. Thakkar waives service on behalf of the respondent no.4.

#. Having regard to the nature of controversy involved and at the request of the learned counsel appearing for the parties, we have taken up this appeal for final disposal.

#. While dealing with the petition, a direction was sought on the school to forward the form of the original petitioner for appearing at the standard 12th examination which is scheduled to be held on 15th March, 2004 as stated by the learned counsel. The learned Single Judge in para-2 of the judgment recorded that he had heard different counsel appearing for various parties in the petition. In para-3, His Lordship observed as follows:

" I have heard the matter at length. Without adjudicating the merits of the matter, looking to the peculiar facts and circumstances of the case, if I pass the following order the same will be in the interest of justice.

[i] The school authority shall forward the form of the petitioner to to be board. The board will not insist for any certificate to be given by the principal in this behalf.

[ii] The Board will accept the form of the petitioner with late fees and allow him to appear in the examination."

His Lordship in para-4 held that in view of the above observations and directions, the petition was disposed of and Rule was made absolute with no order as to costs.

#. It is evident from the order that the learned Single

Judge did not go into merits of the case and yet gave direction in the matter requiring the Board to accept the form of the student and allow him to appear at the examination, without taking into consideration the relevant Regulation-19 on which reliance was placed on behalf of the Board for contending that the student was not eligible for being allowed to appear at the examination. The learned counsel appearing for the respondent-student submitted that since the matter was left to the Court, no reasons have been recorded in the order. The learned counsel appearing for the contesting respondents submitted that the matter was argued and the outcome was not left to the Court. We do not propose to enter in to this unseeming controversy. It is not reflected in the impugned order that the matter was left to the Court. On the contrary, it is stated in para-3 of the judgment that the matter was heard at length. The learned Single Judge, however, chose not to adjudicate the matter on merits, and still gave directions to the aforesaid effect. From the record it appears that affidavits and rejoinders were filed and the matter was keenly contested. It was required to be decided on merits before giving any directions as may have been warranted on the basis of the findings reached in the matter. Directions have been issued without reaching any findings on the questions which were involved in the petition. We therefore, with respect, set aside the impugned order and direct the Registry to place the matter before the appropriate Court for hearing it afresh at the earliest. The appeal is accordingly allowed with no order as to costs.

In view of above order, the Civil Application stands disposed of.

[R.K. ABICHANDANI, J.]

[D.H. WAGHELA, J.]
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